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August 13, 2010

BY HAND DELIVERY

Thomasenia Duncan, Esq
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re Matter Under Review 6320

Dear Ms Duncan

We write on behalf of our client, radio talk show host Sean Hannity, in response to the complaint filed in the above-captioned matter under review. The complaint alleges that Mr. Hannity and media corporations Premiere Networks, Inc ("Premiere") and Clear Channel Communications, Inc ("Clear Channel") violated the Federal Election Campaign Act ("the Act") by sending an email in May 2010 to the show's subscriber list. In connection with the show's "Conservative Victory 2010" shows and its on-air support for US House candidate John Garamendi, this email simply forwarded a message from another talk show host soliciting contributions to Mr. Garamendi's campaign. The cost of sending this single email, the complaint alleges, was an impermissible corporate expenditure made in connection with a federal election in violation of 2 U.S.C. § 441b. This politically-motivated complaint should be dismissed with no further action for three reasons.

First, the allegations in the complaint with respect to Mr. Hannity personally should be dismissed because 2 U.S.C. § 441b(a) is inapplicable to individuals who are not officers or directors of the corporation that allegedly used the corporate resources. Second, Premiere and Clear Channel did not make a corporate contribution or expenditure by sending the May 2010 email because the "prior exemption" applies to this particular communication. Third, even if the complaint did adequately allege a violation of the Act – and it does not – it should be dismissed because the costs involved in sending the two-sentence email (and the message from another talk show host that it forwarded) are *de minimis* and further action would not be a good use of the Commission's limited resources.

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I. FACTUAL BACKGROUND

Sean Hannity is the host of *The Sean Hannity Show*. According to the industry trade publication *Talkers Magazine*, the show is the second most-listened-to radio talk show in America, drawing over 14.25 million listeners a week.¹ The show discusses news, current events, politics, and other subjects, and features interviews with well-known public figures. Respondent Premiere has the contractual right to syndicate the show, meaning that it sells the right to broadcast the show to individual radio stations throughout the United States. Premiere is a wholly-owned subsidiary of Respondent Clear Channel, a large media conglomerate.² Neither Premiere nor Clear Channel are owned or controlled by a political party, political committee, or candidate and Mr. Hannity himself is a media personality, not a political candidate.

A. The Hannity.com Website and Email Subscription Service

As is common in the radio talk show industry,³ Premiere operates a website that revolves around *The Sean Hannity Show*. The website, www.hannity.com, complements and serves as an extension of the show itself. It features articles regarding current events and political topics discussed on the show, lists the show's guests, and hosts a "forum" where listeners can comment on the political news of the day.⁴ Although Mr. Hannity owns the domain name and website URL, Premiere licenses the use of the site, the site is hosted on Premiere's internet server, and Premiere is responsible for authoring and maintaining it.

The Hannity.com website also allows visitors to sign up online to receive free emails from the show.⁵ By signing up for these free emails, visitors can "receive news, articles and announcements in [their] e-mail box."⁶ Typically, but not always, the daily emails bear the banner header "Hannity's Headlines" and feature articles summarizing the subjects discussed on

¹ See <http://talkers.com/online/?p=71>

² See <http://www.premiere.com/page/corporate.html>

³ See, e.g., <http://www.rushlimbaugh.com/home/today/guest.html> (Rush Limbaugh), <http://www.billoreilly.com/> (Bill O'Reilly), <http://www.glennbeck.com/> (Glenn Beck), <http://www.bigeddie.com/default.asp> (Ed Schultz)

⁴ See <http://www.hannity.com>

⁵ *Id.*

⁶ <http://www.hannity.com/newsletter/signup>

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the day's show, identifying a "hot topic" from the website's forum, and listing the upcoming guests or topics that will be featured on Mr Hannity's cable television program *See, e.g.*, Exhibit 1. But not every email contains show recaps or the "Hannity's Headlines" banner. For example, in early 2010, subscribers received two emails promoting Mr Hannity's *Conservative Victory* book, neither of which contained recaps or the banner. *See* Exhibits 2 & 3. All of the emails are disseminated to subscribers through Presslaff Interactive Revenue, a California public relations company. *See* Complaint § A ("These emails come from 'The Sean Hannity Show, headlines@hannity.com, with the originating IP address 66.186.15.287, located in California. This IP address is issued to Presslaff Interactive Revenue, which, according to its website, is a radio marketing company that helps to conduct email campaigns for radio stations.") Because emails provide talk radio show hosts with another avenue to communicate their views to their base of fans and listeners, regular emails like this are common in the industry.⁷

B Conservative Victory 2010

Starting in 2009, Mr Hannity began using his radio show to discuss his view that politically-conservative candidates should be elected in the 2010 Congressional elections. He gave this view the catch-phrase "Conservative Victory 2010" and emphasized it repeatedly. An April 30, 2010 show summary published on the website, for example, stated "[t]here's a clear opportunity for the Conservative movement to define their philosophy and push for victory in 2010."⁸ On the May 7, 2010 radio show, Mr Hannity was joined by guest Karl Rove to discuss "how the Conservative Victory 2010 is going."⁹ The daily email that followed that show offered "Conservative Victory 2010 logo gear" for sale at the "Sean Hannity Store." *See* Exhibit 1. Mr Hannity also used other avenues to promote this slogan. In March 2010, for example, he authored a #1 *New York Times* best-selling book entitled *Conservative Victory: Defeating Obama's Radical Agenda* and launched a nationwide "Conservative Victory Tour."¹⁰

⁷ *See* <http://www.rushlimbaugh.com/home/newaletter/guest.html> (*Rush In a Hurry* email), <http://www.billoreilly.com/newaletter> (visitors can sign up for two different Bill O'Reilly email newsletters), <http://www.glennbeck.com/content/newaletter> (daily email from Glenn Beck), <http://www.wegotod.com/signup/signup/> (daily email from Ed Schultz)

⁸ <http://www.hannity.com/show/2010/04/30>

⁹ <http://www.hannity.com/show/2010/05/07>

¹⁰ <http://www.hannity.com/articles/conservative-victory-tour-photos/video/10528>

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In connection with the "Conservative Victory 2010" theme, Mr Hannity has used his radio show to support specific candidates running for office in 2010 that he believes are politically-conservative. For example, Mr Hannity has supported John Gomez, a Republican candidate to represent New York's Second Congressional District in the United States House of Representatives. In late February or early March 2010, Mr Hannity asked Representative Peter King, a guest on his radio program, if he would support Mr Gomez.¹¹ On his May 3, 2010 show, Mr Hannity had Mr Gomez on his show to discuss illegal immigration and encouraged listeners to visit Mr Gomez's campaign website.¹² Later, on the July 16, 2010 radio program, Mr Hannity expressed his support for Mr Gomez and allowed Mr Gomez and Congresswoman Michele Bachmann to solicit contributions to Mr Gomez's campaign.¹³

Mr Hannity has also used the email subscriber list to reiterate his support for a "Conservative Victory" in 2010 and, as part of that, the election of John Gomez, among others. In connection with these efforts, on the afternoon of Friday, May 7, 2010, just four days after having Mr Gomez on as a guest on his radio program, he approved an email to the subscriber list supporting Mr Gomez's candidacy. The audience that received this email was the same as the audience that received the other Hannity.com emails, it was sent to the same distribution list and no one else. It was also sent using the IP address of the same public relations vendor that disseminated the other emails, Presslaff Interactive Revenue. See Complaint § A.

This particular email, which was sent on May 8, 2010, was simpler than the usual email. It did not contain the "Hannity's Headlines" banner. And, because *The Sean Hannity Show* is not broadcast on Saturday, it did not recap the day's show. In these respects, it was like the two emails sent earlier in the year promoting Mr. Hannity's book, neither of which used the

¹¹ http://mobile.newsday.com/info.nxJS2SSFONID=6A5EFD949196D57D2EB18A1757780960?site=newsday&view=page8&focal_s=newsday_1main&feed_c=topstories&feed_r=11797144&nopaging=1

¹² See CD enclosed with response (file labeled Hannity_05_03_2010 mp3)

¹³ See CD enclosed with response (file labeled Hannity_07_16_2010.mpeg) Mr Hannity has also used his radio show to promote other candidates who he believes would contribute to a conservative victory in 2010. For example, on his May 18, 2010 radio show, Mr Hannity supported the candidacy of Tim Burns in Pennsylvania's 12th Congressional District. The website recap of the show stated "If Tim Burns can pull this off and win this election it will most certainly add to the Conservative Victory 2010 groundswell which is getting pretty large these days" <http://www.hannity.com/show/2010/05/18>

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"Hannity's Headlines" banner or included recaps of the day's show. Instead, it simply forwarded a message from another talk radio show host, Mark Levin, soliciting contributions to Mr. Gomez. In keeping with the show's recent "Conservative Victory 2010" theme and Mr. Hannity's on-air public support for Mr. Gomez, the email was introduced with the following two sentences: "If you haven't seen this yet, you really need to take a look. This is a great American who's working hard for a Conservative Victory in 2010." See Exhibit 4.

C The Complaint

On June 24, 2010, New York Democratic Party fundraiser and activist Jay S. Jacobs¹⁴ filed a complaint with the Commission challenging the dissemination of this email. The complaint alleges that Mr. Hannity, Clear Channel, and Premiere violated federal election law by using corporate resources to forward this email.

II. ANALYSIS

The allegations in the complaint on their face fail to establish any violation of the Act and the complainant seriously misstates the legal standards that apply.

A Mr. Hannity, an Individual, Cannot Be Liable for Violations of 2 U.S.C. § 441b

The complaint alleges that Mr. Hannity, Premiere, and Clear Channel each violated 2 U.S.C. § 441b(a) by using Clear Channel and Premiere corporate resources to send the May 8, 2010 email. See Complaint §§ B(2), B(3) (alleging that Respondents Hannity, Premiere, and Clear Channel made an "in-kind contribution" of corporate resources) and Complaint § B(1) (alleging that contributions of corporate resources are prohibited by 2 U.S.C. § 441b(a)). Mr. Hannity, however, cannot personally be held liable for violations of 2 U.S.C. § 441b(a) because that provision applies only to corporations, labor organizations, and their officers and directors.

It is unlawful for any corporation, partnership, or any labor organization, to make a contribution or expenditure in connection with any [federal] election.

¹⁴ Mr. Jacobs is the Chairman of the New York State Democratic Committee and the Nassau County Democratic Committee. See www.nassaucountydems.com/content/jay-s-jacobs. According to FEC records, Mr. Jacobs has contributed to the campaign of Mr. Gomez's opponent, Congressman Steve Israel. Representative Israel represents New York's Second Congressional District, which borders Nassau County.

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or any officer or any director of any corporation or any officer of any labor organization to consent to any contribution or expenditure by the corporation or labor organization, as the case may be, prohibited by this section 2 U S C § 441b(a) (emphasis added)

Mr Hannity is not an officer or director of Clear Channel or Premiere Accordingly, the complaint should be dismissed in its entirety with respect to him

B The "Press Exemption" Applies to the Entity

The complaint should also be dismissed because no corporate "contribution" or "expenditure" was made in connection with the dissemination of the May 8, 2010 email Commission regulations define "contribution" and "expenditure" to exclude the "cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, Web site, newspaper, magazine, or other periodical publication, including any Internet or electronic publication unless the facility is owned or controlled by any political party, political committee, or candidate" 11 C F R § 100.73 (exception from definition of "contribution"), 11 C F R § 100.132 (exception from definition of "expenditure"), 2 U S C § 431(9)(B)(1) (statutory exception for news stories, commentaries, or editorials distributed through facilities of a media entity) This exemption is referred to as the "press exemption" or the "media exemption" See, e.g., MUR 4089, Notification with Factual and Legal Analysis to Meakem Cowens, p. 5 (May 28, 2009)

The purpose of this exception is to protect the press's First Amendment right to comment on political campaigns

[I]t is not the intent of the Congress in the present legislation to limit or burden in any way the first amendment freedoms of the press and of association Thus the exclusion assures the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns

H R Rep No 93-1239, 93d Congress, 2d Sess at 4 (1974) The Commission has therefore "interpreted the media exemption broadly" MUR 4863, First General Counsel's Report, p. 2 (May 27, 1999)

The Commission applies a two-part test to determine whether the press exemption applies First, the Commission asks whether the entity engaging in the activity is a "press entity" If it is, the Commission asks whether the press entity (a) is owned or controlled by a

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political party, political committee, or candidate and, if it is not, whether it (b) was acting as a press entity in conducting the activity at issue (i.e., whether it was acting in its "legitimate press function") See *Reader's Digest Ass'n v FEC*, 509 F Supp 1210 1215 (S D N Y 1981), *FEC v Phillips Publ'g*, 517 F Supp 1308, 1312-13 (D D C 1981), Advisory Opinions 2007-20 (XM), 2005-19 (The Inside Track), 2005-16 (Fired Up!), and 2004-07 (MTV) Because the activities of Premiere and Clear Channel here meet each part of this test, the press exemption applies

1 Clear Channel and Premiere Are Press Entities

Clear Channel and Premiere are "press entities," within the meaning of the Act and the Commission's regulations An entity is a "press entity" if it "is in the business of producing on a regular basis a program that disseminates news stories, commentary, and/or editorials" See Advisory Opinion 2007-20 (XM) ¹⁵ Applying this standard, the Commission has previously determined that both Clear Channel and Premiere are "press entities" See MUR 4689, First General Counsel's Report, p 20 (August 4, 1999) & Statement of Reasons of Vice Chairman Wold and Commissioners Elliott, Mason, and Sandstrom, p 2 (February 14, 2000) (holding that Premiere is a press entity), MUR 5569, First General Counsel's Report, p 2 n 1 (January 10, 2006) (because press exemption applied to radio station, the General Counsel did not recommend granting Clear Channel, the station's parent, as a respondent, recommendation adopted unanimously by Commission)

2 Respondents Are Not Owned Or Controlled By Any Candidate, Party, or Committee

In order for the press exemption to apply to a communication, the press entity may not be owned or controlled by any political candidate, party, or committee See 11 C F R § 100.73, 11

¹⁵ An entity's political leanings are irrelevant to this determination See FCC Advisory Op'n 2008-14 (Melothe, Inc.) at 4 (an entity's "appeal especially to supporters" of a particular party or candidate is not relevant to the issue of whether the entity qualifies as a press entity), *id* ("the Commission does not investigate an entity's viewpoints in determining whether it qualifies as a 'press entity' under the press exemption"), Advisory Opinion 2005-16 (Fired Up!) ("an entity otherwise eligible for the press exemption would not lose its eligibility merely because of a lack of objectivity in a news story, commentary, or editorial, even if the news story, commentary, or editorial expressly advocates the election or defeat of a clearly identified candidate for Federal office") (internal citations omitted)

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CFR § 100.132 Clear Channel and Premiere are not owned or controlled by any candidate, political party, or political committee and Mr Hannity is not a candidate for federal office. The second element is therefore met here.

3 Respondents Acted Within Their Legitimate Press Function

For the press exemption to apply, a press entity (not owned or controlled by any candidate, party, or committee), must be acting within its legitimate press function in engaging in the activity at issue. See *Reader's Digest Ass'n v. FCC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981), *FEC v. Phillips Publ'g*, 517 F. Supp. 1308, 1312-13 (D.D.C. 1981), Advisory Opinions 2007-20 (XMI), 2005-19 (The Inside Track), 2005-16 (Fixed Up!), and 2004-07 (MTV). Because Clear Channel and Premiere acted as press entities in disseminating the May 8, 2010 email, this third element is met here, too.

- a) A radio program's email communications with listeners are protected by the press exemption.

There appears to be no dispute that Mr. Hannity could have used his radio show to expressly advocate for Mr. Gonser's election and to solicit contributions to his campaign. In fact, in an earlier MUR, the Commission unanimously accepted the General Counsel's recommendation that radio broadcasts from *The Sean Hannity Show* in support of federal candidates fell "squarely" within the radio station's legitimate press function. See MUR 4863, First General Counsel's Report, p. 9 (May 27, 2007). Numerous other Commission Advisory Opinions, General Counsel's Recommendations, and Statements of Reasons have reached similar conclusions.¹⁶ Indeed, the Commission has repeatedly stated that allegations of what was

¹⁶ See, e.g., MUR 6089, Notification with Factual and Legal Analysis to Meakem Comms, p. 8 (May 8, 2009) (press exemption applied to talk radio production company which paid for a radio program that expressly advocated the election of a Congressional candidate and solicited contributions to the candidate's campaign, exemption applied even though communication was allegedly coordinated with the candidate), MUR 5569, First General Counsel's Report, p. 7 (January 16, 2006) (express advocacy of candidate on talk radio show "fall[s] squarely within the legitimate press function of the radio station"), Advisory Opinion 2008-14, p. 7 (Meloth, Inc.) ("nothing prohibits" Internet TV commentators from "mak[ing] express advocacy endorsements of certain candidates to viewers of its Web site content and, concurrently, to suggest that viewers support such candidates with their contributions," so long as the media corporation is not owned or controlled by any candidate, political party, or political committee), Advisory Opinion 1980- (continued)

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said in a particular communication are irrelevant to whether the press entity was acting within its legitimate press function in making the communication. See MUR 4689 (Statement of Reasons of Chairman Wold and Commissioners Elliott, Mason, and Sandstrom), MUR 5110/5162, Statement of Reasons for MURs 5110 and 5162 of Chairman McDonald, Vice Chairman Mason, Commissioners Sandstrom, Smith, and Wold, p 2 (July 27, 2001) ("The content of broadcast is irrelevant to the determination of whether the media entity is exercising its valid press function.")

The complaint, however, asserts that even though radio shows may expressly advocate the election of candidates and solicit listeners for campaign contributions *over the air*, they somehow cannot express the same sentiments *via email* as a subset of those listeners. Not so. A radio show acts within its legitimate press function when it communicates with listeners by *any means*, be it over the airwaves, on the Web, through emails, or through in-person rallies, as long as those means are an extension of its regular media operations. In MUR 5555, a complaint alleged that a radio station's posting on its website of "Ross for Congress" headlines and a link to the campaign website violated the ban on corporate contributions to federal candidates. The Office of the General Counsel, however, recommended dismissing the complaint because the press exemption applied to these activities. It emphasized that the website's activities were protected like the show itself because the website was "merely an extension of the radio station's regular media operations." MUR 5555, First General Counsel's Report, p 9 (January 10, 2006) (quoting, in parentheses, station's response to complaint). The Commission voted 6-0 to dismiss the complaint.

The use of email to reach fans and listeners likewise is an "extension" of a radio program's "regular media operations" and therefore falls within the press entity's legitimate press function. As the Commission recognized in Advisory Opinion 2004-07, at 7 (MTV), "the media is increasingly using electronic mails" to disseminate the news, and email communications with a media entity's audience are "typical" and "consistent with established industry practice." *Id.* As mentioned above, well-known radio talk show hosts Rush Limbaugh, Glenn Beck, Bill O'Reilly, and Ed Schultz and many others all offer free subscriptions to regular show emails on their websites. See *supra* note 7. Because *The Sean Hannity Show's* use of emails was consistent with this industry practice and was an extension of the show's "regular

109 (Hansen) (press exemption applied to newsletter with regular commentaries that solicited contributions to a federal candidate)

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media operations," the show's dissemination of the email at issue here was within its "legitimate press function."

b) The complaint misreads *FEC v Massachusetts Citizens for Life*

The complaint's reliance on *Federal Election Commission v Massachusetts Citizens for Life, Inc*, 479 U S 238 (1986) ("MCFL"), is misplaced. In MCFL, a non-profit corporation that devoted most of its time to activities unrelated to the media irregularly published a newsletter whose total circulation never exceeded 6,000. In 1978, the corporation printed more than 100,000 copies of a flyer that advocated the election of specific candidates. The flyer was edited by an officer who was not part of the staff that prepared the newsletters and it did not contain the newsletter material. MCFL argued that its expenses in publishing the flyer were protected by the press exemption because it also published the newsletter. The Court rejected that argument, holding

[W]e cannot accept the notion that the distribution of such flyers by entities that happen to publish newsletters automatically entitles such organizations to the press exemption. A contrary position would open the door for those corporations and unions with in-house publications to engage in unlimited spending directly from their treasuries to distribute campaign material to the general public, thereby frustrating § 441b's prohibition.

Id. at 251

The complaint reads this case as holding that a true media entity's publications are not protected by the press exemption unless they are in the same format as existing regular publications. This assumes that MCFL treats media entities in the business of communicating with the general public the same as private corporations whose only press activities involve the publication of a newsletter of limited circulation. MCFL did not reach such a sweeping conclusion. Rather, the case was intended to prevent corporations with publications of limited circulation from taking advantage of the press exemption to "distribute campaigns material to the general public." *Id.* at 251. That concern is not present in the case of a large media organization which already expressly advocates for the election of specific candidates in its broadcasts to the general public. As the complaint would have it, a corporation may expressly advocate a candidate's election over the airwaves, but the minute it tries to reach a smaller subset of those listeners in a format it has not used previously, it violates the Act. This is not what the Court held. See MUR 5569, Statement of Reasons of Chairman Toner and Commissioners Mason and

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von Spakovsky, at 3 (March 17, 2006) ("[T]he fact that a broadcaster had never done such a remote broadcast would not necessarily remove such a broadcast from the press exemption. Otherwise it may be difficult for a press entity that has never done such a remote broadcast to start doing them without running outside the protection of the press exemption.")

In any case, even if the *MCFL* analysis applies to the activities of organizations already in the business of communicating with the general public, *MCFL* supports application of the press exemption here. The Court in *MCFL* relied on four factors in concluding that the press exemption that applied to the newsletter did not carry over to the flyer: (i) the flyer was not published through the facilities of the regular newsletter, (ii) the flyer was distributed to a group that was 20 times larger than the regular newsletter audience, (iii) the flyer was available to the general public but the newsletter was not, and (iv) the content of the flyer was different than the newsletter. *FEC v MCFL*, 479 U.S. at 250-51.

Applying these four factors here, the Commission should conclude that the press exemption that applies to the regular daily emails also applies to the May 8, 2010 email. In this case, three of the four factors the *MCFL* Court relied on in concluding that the press exemption did not apply are missing here. First, in this case, the May 8, 2010 email was published through the same facilities as the regular daily emails, not through different facilities as was the case in *MCFL*. See Complaint at § A ("The email was sent from IP address 69.186.15.207, the same IP address as the regular email updates sent by 'The Sean Hannity Show'"). Second, the May 8, 2010 email was sent to the same audience that received the other emails, not an audience 20 times that size as was the case in *MCFL*. Third, like the other emails, the May 8, 2010 email was available for free to any member of the general public who visited the Hannity.com website and signed up for them.

To be sure, the May 8, 2010 email did not contain the "Hannity's Headlines" banner and, because it was sent on a Saturday, it did not contain a show recap. In this respect, it was no different than other emails sent to the subscriber list. See Exhibits 2 & 3. And, in any case, a difference in content alone is insufficient to move a particular publication outside the protection of the press exemption. In *Federal Election Commission v. Phillips Publishing, Inc.*, 317 F. Supp. 1302 (D.D.C. 1981), a newsletter publisher distributed a newsletter that opposed Senator Kennedy's campaign. The complainant argued that the press exemption did not apply because the newsletter at issue was not in the same format as the regular publication, was missing the normal legends, and had different content. Notwithstanding these content differences, the United States District Court for the District of Columbia refused to enforce a subpoena against the publisher. It held that, in light of the press exemption, "it [was] extremely unlikely that a violation [of the

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Act would] be found" *Id* at 1314, *see also* MUR 5555, Statement of Reasons of Chairman Toner and Commissioners Mason and von Spakovsky, p 5 (March 17, 2006) ("The [MCFL] Court did not hold that, for the press exemption to apply, there must be no differences from what the press entity usually does. Indeed, MCFL could be interpreted to mean that *any* similarity to the regular newsletter, in facilities, distribution, or format, might have placed the publication within the press exemption") (emphasis in original)

C The Commission Should Exercise its Discretion to Dismiss the Complaint

Even if the costs associated with this one email were a corporate expenditure -- and they are not -- the Commission should exercise its discretion to dismiss the complaint. The complaint challenges the distribution of a single email. The email was not sent to a group that was any larger than the group that already received other emails and it was sent using the same facilities that distributed the other emails. Any costs involved in disseminating the email at issue would therefore be *de minimis*. Moreover, it would make little sense to bring an enforcement action against a radio show host for sending an email soliciting donations to a federal candidate where there is no dispute that the host could solicit donations from a much larger audience over the airwaves.

The Commission therefore should deny the complainant's request that it commit its limited resources to pursuing this enforcement matter. *See* MUR 5491, Statement of Reasons of Chairman Thomas, Vice Chairman Toner, and Commissioners Mason, McDonald, Smith, and Weintraub, p 2 (exercising Commission's prosecutorial discretion to refuse to bring enforcement action against corporation that circulated candidate solicitation to email distribution list because, among other things, there was a "strong likelihood that the costs associated with this Internet communication were minimal" and further enforcement would not be "a good use of Commission resources"), MUR 5770, Statement of Reasons of Chairman Lenhard and Commissioners von Spakovsky, Walther, and Weintraub, p 2 (September 12, 2007) ("Given the specific circumstances present in this matter, including the relatively small amount potentially in violation and the nature of the communication, the Commission does not believe that further use of its limited resources is warranted in this matter. Accordingly, the Commission voted to dismiss this matter as an exercise of its prosecutorial discretion.")

* * *

For the reasons stated above, the complaint should be dismissed on its merits with no further action. Allowing a patently-motivated complaint of this kind to proceed not only

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**would chill Mr Hannity's own First Amendment rights but also would invite similar complaints
against press entities that use new media to support candidates on both sides of the political aisle**

Respectfully submitted,

Robert K. Kelner / zgp

**Robert K. Kelner
Zachary G. Parks**

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EXHIBIT 1

5/19/2010

Print

From: The Sean Hannity Show (hannity@hannity.com)

Attachment C

To: [REDACTED]

Date: Fri, May 7, 2010 9:02 15 PM

Cc:

Subject: Solutions for Immigration



On Today's Show...

May 7th, 2010

Mayor Rudy Giuliani

Sean was joined by "America's Mayor", former New York City Mayor Rudy Giuliani to discuss the latest terrorist attacks in New York City. "Getting lucky doesn't seem to be a very good national policy to prevent terrorism," suggested a thankful Hannity. "The reality is that we're seeing a lot more of this," warned Giuliani. "We're not going to defeat our enemies until we confront who they are," argued the former mayor. "For the life of me I don't understand why President Obama can't utter the words 'Islamic extremist'." Thankfully the events in New York's Times Square can remind us that we need to be continually vigilant and hopefully it will be a wakeup call to Washington that more needs to be done to secure our borders and protect our citizens.



Jay Sekulow and Linda Chavez: Solutions For Our Immigration Crisis

Sean was joined by Jay Sekulow, Chief Counsel at the American Center for Law and Justice and Linda Chavez, the Chairman of the Center for Equal Opportunity, joined together to talk about the immigration crisis. "Violent crime on our borders has never been higher," argued Hannity, "the chaos has never been this out of control." Sekulow offered, "The Federal government hasn't done anything and the fact is there's a real problem down there and there's been no mechanism to help them." Chavez retorted, "What we need is legal immigration reform that allows people to become legal citizens." Hannity closed the argument saying, "we can only accept so many people each year and we really need to give preference to those immigrants who respect our borders, laws and sovereignty." Wow, what a concept.



Karl Rove: The Conservative Victory 2010

Sean was joined by "The Architect" Karl Rove to discuss his thoughts on how the Conservative Victory 2010 is going. "So where do you think the Republicans fail in the House," asked Sean. "Can the Republicans win the House," asked Rove, "You bet especially after that health care bill but really I think they can gain 36 seats but this will be a ward election and they'll need 41 to take control." With your help, we can still pull this off. Visit Hannity.com for more information on how you can help.

[REDACTED]

5/19/2010

Print

Today's "Hot Topic" From The Hannity Forums:

I'm 33 and I have never heard so much animosity -- posted by Keithm180

I can't remember a time when people have really stooped so low to call out names so much and bash each others political views. I know every administration has had its share of bashing, but this past year and a half, it has grown ten-fold. I do respect others peoples views on issues, I just don't like the name calling and such.

(Name)

>> TV Tonight (Hannity FOXNews 8pm EST).

More cops, safer streets, and the deficit eliminated just from legalizing pot? Fmr Gov Gary Johnson sparks up a debate!



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Now you can get your very own Sean Hannity Conservative Victory 2010 logo gear! We have fantastic quality-embroidered golf shirts, t-shirts, hats, hoodies, coffee mugs, and lots of more really cool stuff in every size and it's all made in the USA! We even have those mini Nerf footballs too!

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11044283767

EXHIBIT 2

11044283768

----- Forwarded message -----

From The Sean Hannity Show <headlines@hannity.com>

Date Mon, Mar 20, 2010 at 5 19 PM

Subject Sean's New Book "Conservative Victory" - AVAILABLE NOW!

To [REDACTED]



Sean Hannity's *Revolutionary Book* Available Now!

After six years, Sean Hannity decided to write another book. His timing is perfect.

In *Conservative Victory* Sean Hannity issues a strong call to action. Hannity surveys all the major Obama players—from the president's affiliation with radical theology to his advisors' history of Marxist activism, repression of the media, support for leftist dictators, and worse.

He exposes their resulting campaign to dismantle the American free-market system and forfeit our national sovereignty. But he draws on the examples of Ronald Reagan and the GOP's Contract with America to show how conservatives can unite behind the country's most cherished principles and act now to get America back on the right track - while we still can.



CONSERVATIVE VICTORY 2010 NATIONAL BOOK TOUR

Don't miss your chance to meet Sean
Hannity and have him autograph your
copy of *Conservative Victory*

For more information



March 30 2010 Sim Valley CA

March 31 2010 Salt Lake City UT

April 2 2010 Pittsburgh PA

April 3 2010 Philadelphia PA

April 7 2010 Minneapolis MN

April 8 2010 Grand Rapids MI

April 9 2010 New Orleans LA

April 10 2010 Kansas City KS

April 10 2010 Franklin TN

April 13 2010 The Villages FL

April 14 2010 Atlanta GA

April 15 2010 Cincinnati OH

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EXHIBIT 3

11044283771



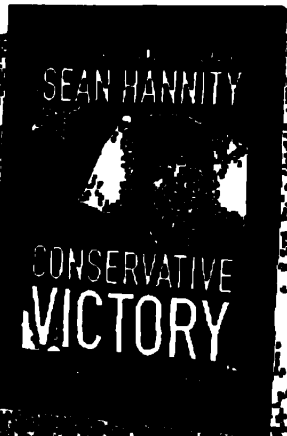
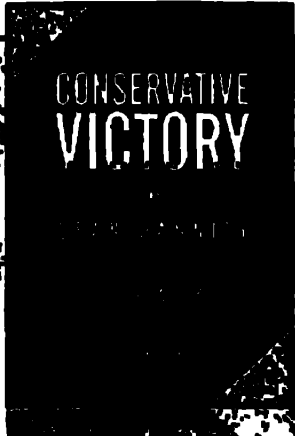
Sean Hannity's *Revolutionary Book* Releases in ONE WEEK!

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AUTOSIGNED COLLECTOR'S EDITION

The book, CD, or both, a Day or Better a Day.

Personally signed by Sean Hannity, this numbered hard copy edition of *Conservative Victory* comes in a leather-bound collector's box and is only available through www.Conservative.com.

Collector's Edition ships the week of May 10!

CONSERVATIVE VICTORY 2010 NATIONAL BOOK TOUR

Don't miss your chance to meet Sean
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